

**CHAPTER 22    PROCUREMENT BY COMPETITIVE SEALED BIDDING**

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**2200 SEALED BID PROCUREMENT**

- 2200.1 The contracting officer shall solicit goods and services using the competitive sealed bidding process set forth in this chapter for each contract estimated to be valued at ten thousand dollars (\$10,000) or more for which specifications for the requirement can be prepared that will permit the awarding of the contract on the basis of the lowest bid price or the lowest evaluated bid price.
- 2200.2 The contracting officer shall use the competitive sealed bidding process set forth in this chapter for each contract for the operation of a gambling form estimated to be valued at one thousand dollars (\$1,000) or more for which specifications for the requirement can be prepared that will permit the awarding of the contract on the basis of the lowest bid price or the lowest evaluated bid price.
- 2200.3 All contracts which do not require the use of competitive sealed bids under §2200.1 or 2200.2 shall be awarded by using competitive sealed proposals in accordance with the provisions of Chapter 23, except contracts that are awarded in compliance with the sole source or emergency procurement provisions of Chapter 24, or contracts awarded in accordance with the small purchase procedures in Chapter 25.
- 2200.4 An invitation for bids ("IFB") shall be used to solicit goods and services under the competitive sealed bidding process.
- 2200.5 If the Director of Procurement (the "Director") has determined that an IFB is to be cancelled, and that the use of the competitive sealed proposal process under Chapter 23 is appropriate to complete the procurement, the contracting officer shall proceed in accordance with §2301 of Chapter 23 of this title.
- 2200.6 The contracting officer shall evaluate bids without discussions with bidders.
- 2200.7 The contracting officer shall use firm-fixed-price contracts when the competitive sealed bidding process is used. Fixed-price contracts with economic price adjustment clauses may be used if authorized by the Director.
- 2200.8 Information concerning proposed acquisitions shall not be released outside the Agency before solicitation, except for pre-solicitation notices.

**AUTHORITY:** Unless otherwise noted, the authority for this chapter is §4 of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, D.C. Law 3-172, D.C. Code §2-2501 *et seq.* (1994 Repl. Vol.).

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6715 (September 22, 1989); as amended by Final Rulemaking published at 40 DCR 6963 (October 1, 1993).

**2201 INVITATION FOR BIDS**

- 2201.1 Each IFB shall include the following:

- (a) Instructions and information concerning the requirements for submission of bids, including the time and date set for receipt of the bids and the address where bids are to be delivered;
  - (b) The purchase description, delivery or performance schedule, and any special instructions necessary; and
  - (c) A statement indicating whether award will be made on the basis of the lowest bid price or the lowest evaluated bid price, whichever is applicable.
- 2201.2** The contracting officer shall prepare each IFB using a uniform contract format, unless a special contract format is authorized by the Director.
- 2201.3** The uniform contract format shall contain the following in the order specified:
- (a) The solicitation and contract form prescribed by the Director;
  - (b) A description of the supplies, services, or other items, quantities, and prices;
  - (c) Any description or specifications necessary to permit maximum practical competition;
  - (d) Packaging, packing, preservation, and marking requirements;
  - (e) Inspection, acceptance, quality assurance, and reliability requirements;
  - (f) Requirements for time, place, and method of delivery or performance;
  - (g) Requirements for accounting and appropriation data and any required contract administration information;
  - (h) Special contract requirements;
  - (i) Contract clauses or provisions required by law or this title;
  - (j) A list of documents, exhibits, and other attachments;
  - (k) Representation, certifications, and other statements of bidders;
  - (l) Instructions, conditions, and notices to bidders; and
  - (m) Evaluation factors for award, such as any price related factors other than the bid price.
- 2201.4** The IFB shall state whether an award shall be made on the basis the lowest bid price or the lowest evaluated bid price. If the lowest evaluated bid price basis is used, objective measurable criteria shall be used. The objective measurable criteria shall be related to price.
- 2201.5** If lowest evaluated bid price is the basis for award, the objective measurable criteria to be used shall be set forth in the IFB.



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- 2201.6 The IFB shall require written acknowledgement by each bidder of the receipt of all amendments, addenda, and changes issued.
- 2201.7 Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the IFB or otherwise supplied to prospective bidders.
- 2201.8 The contracting officer shall thoroughly review each IFB before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6716 (September 22, 1989).

**2202 PUBLIC NOTICE OF INVITATIONS FOR BIDS**

- 2202.1 The contracting officer shall provide for adequate public notice of the invitation for bids to be given at a sufficient time before the date set forth in the notice for the opening of bids. In no event shall the notice required in this subsection be less than thirty (30) calendar days.
- 2202.2 The notice required under §2202.1 shall include publication in at least one (1) of, or a combination of, the following:
- (a) A newspaper of general circulation;
  - (b) A trade publication considered appropriate by the Director of Procurement; or
  - (c) The "*District of Columbia Procurement Digest*."
- 2202.3 The Director of Procurement shall submit notice of each IFB to the Department of Administrative Services for inclusion on the D.C. Procurement Hotline.
- 2202.4 When a solicitation mailing list is available for the particular requirement, invitations for bids or notices of the availability of IFB's shall be mailed or otherwise furnished to a sufficient number of potential bidders for the purpose of securing competition.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6717 (September 22, 1989).

**2203 TIME FOR SUBMISSION OF BIDS**

- 2203.1 The contracting officer shall provide a reasonable time for prospective bidders to prepare and submit bids in all IFB's, consistent with the needs of the Agency, but in no event less than the thirty (30) days required for public notice under §2202.
- 2203.2 When establishing a reasonable bidding time, the contracting officer, shall consider the following factors:
- (a) The degree of urgency of the need for the procurement;

- (b) The complexity of the procurement requirements;
- (c) The anticipated extent of subcontracting; and
- (d) The normal mailing time for both invitations and bids.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6718 (September 22, 1989).

## **2204 BID REQUIREMENTS**

- 2204.1 Each bid shall be based upon specifications contained in the IFB.
- 2204.2 Each bid shall be typewritten or written legibly in ink.
- 2204.3 Each erasure or alteration shall be initialed by the signer in ink.
- 2204.4 Each bid, except a telegraphic bid, shall be signed in ink.
- 2204.5 Each bid, except a telegraphic bid, shall be submitted in an envelope that clearly indicates that it contains a bid and identifies the IFB.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6718 (September 22, 1989).

## **2205 TELEGRAPHIC BIDS**

- 2205.1 The Director may authorize telegraphic bids only if the date for opening of bids will not allow bidders sufficient time to submit bids in the prescribed form, or if prices are subject to frequent changes.
- 2205.2 Telegraphic bids shall contain the following:
  - (a) Specific reference to the IFB;
  - (b) The items, quantities, and prices for which the bid is submitted;
  - (c) The time and place required for delivery of the bid; and
  - (d) A statement that the bidder agrees to all the terms, conditions, and provisions of the IFB.
- 2205.3 If telegraphic bids are authorized, a telegraphic bid received by the designated office not later than the time set for opening of bids shall be considered.
- 2205.4 Telegraphic bids shall not be considered unless permitted by the IFB.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6718 (September 22, 1989).

**2206 BID SAMPLES**

- 2206.1 If the bidder is required to furnish bid samples, this requirement shall be stated in the IFB.
- 2206.2 The contracting officer shall not require bidders to furnish bid samples unless the characteristics of the product cannot be described adequately in the specifications or purchase description.
- 2206.3 Bid samples shall be used only to determine the responsiveness of the bid and shall not be used to determine a bidder's ability to produce the required items.
- 2206.4 The contracting officer shall reject a bid as nonresponsive if the sample fails to conform to each characteristic listed in the IFB.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6719 (September 22, 1989).

**2207 DESCRIPTIVE LITERATURE**

- 2207.1 If the bidder is required to furnish descriptive literature, this requirement shall be stated in the IFB.
- 2207.2 The contracting officer shall not require bidders to furnish descriptive literature unless the contracting officer needs it to determine before award whether the products offered meet the specifications or to establish exactly what each bidder proposes to furnish.
- 2207.3 Unsolicited descriptive literature not required by the IFB shall not be considered as qualifying the bid and shall be disregarded.
- 2207.4 If descriptive literature is required, the contracting officer shall include a written statement of the reasons why product acceptability cannot be determined without submission of descriptive literature and shall include the document in the contract file.
- 2207.5 If descriptive literature is to be required, the IFB shall clearly identify the following:
- (a) The type or contents of the descriptive literature that is required to be furnished;
  - (b) The purpose for which the literature is required;
  - (c) The extent to which the literature will be considered in the evaluation of bids; and
  - (d) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature furnished does not comply with the requirements of the IFB.



**2207.6** The contracting officer may waive the requirement for furnishing descriptive literature if either of the following occurs:

- (a) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the Agency; or
- (b) The contracting officer, on advice of technical personnel, determines that the product offered by the bidder complies with the specification requirements of the current IFB.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6719 (September 22, 1989).

**2208 RECORDS OF INVITATIONS FOR BIDS AND BIDS**

**2208.1** The Director of Procurement ("Director") shall retain a file of each IFB issued by the Agency and each abstract or record of bids.

**2208.2** The file for each IFB shall include the following:

- (a) The name and address of each prospective bidder on a solicitation mailing list to which the IFB was sent and additional prospective bidders that were sent copies of the IFB upon request;
- (b) The name of each publication in which notice of the IFB was published and the date of each publication; and
- (c) The date on which the IFB was issued.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6720 (September 22, 1989).

**2209 [RESERVED]**

**2210 SOLICITATION MAILING LISTS**

**2210.1** The Director of Procurement shall establish solicitation mailing lists to ensure access to adequate sources of supplies and services, except when the requirements of the Agency can be obtained within the local trading area through use of the small purchase procedures or are nonrecurring.

**2210.2** All eligible businesses that have submitted solicitation mailing applications, or that the contracting officer considers capable of filling the requirements of a particular acquisition, shall be placed on the appropriate solicitation mailing list.

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2210.3 Prospective bidders shall be notified that they have been placed a solicitation mailing list.

2210.4 An applicant shall be notified if it is not put on a solicitation mailing list and the reasons why the application was rejected.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6720 (September 22, 1989).

**2211 REMOVAL OF NAMES FROM SOLICITATION MAILING LISTS**

2211.1 A business that fails to respond to solicitations on three consecutive IFB's for similar items may be removed by the Director from the applicable mailing list but only for the items involved in the IFB.

2211.2 In individual cases, prospective bidders that fail to respond may retained on a list if retention is in the best interests of the Agency.

2211.3 Prospective bidders that have been debarred or suspended from Agency contracts or otherwise determined to be ineligible to receive awards shall be removed from solicitation mailing lists to the extent required by the debarment, suspension, or other determination ineligibility.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6721 (September 22, 1989).

**2212 REINSTATEMENT ON SOLICITATION MAILING LISTS**

2212.1 Prospective bidders that have been removed from solicitation mailing lists may be reinstated by the Director upon request or by filing new application.

2212.2 No debarred or suspended bidder shall be reinstated on a solicitation mailing list during the period of a debarment or suspension.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6721 (September 22, 1989).

**2213 EXCESSIVELY LONG MAILING LISTS**

2213.1 Solicitation mailing lists shall be used to promote competition commensurate with the dollar value of the proposed contract.

2213.2 If the number of bidders on a mailing list is excessive in relation to a specific procurement, the list may be reduced by either of the following methods:

(a) Rotation of lists or using a different portion of a list for separate procurements; or

(b) Using pre-solicitation notices instead of initially forwarding complete bid sets.



- 2213.3** The fact that less than an entire mailing list is used shall not preclude furnishing of bid sets to other prospective bidders, upon request, or consideration of bids received from bidders to whom the IFB was not mailed or delivered.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6721 (September 22, 1989).

**2214 [RESERVED]**

**2215 PRE-BID CONFERENCES**

- 2215.1** The contracting officer may use pre-bid conferences to explain the procurement requirements.
- 2215.2** Pre-bid conferences shall be announced to all prospective bidders in the IFB.
- 2215.3** The pre-bid conference shall be held as early as possible after the IFB has been issued and before the bids are opened.
- 2215.4** Nothing stated at the pre-bid conference shall change the IFB unless a change is made by the contracting officer by written amendment.
- 2215.5** The contracting officer shall prepare a written report of the conference and shall supply it to all prospective bidders who request a copy in writing.
- 2215.6** The report of the pre-bid conference shall be a public document.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6722 (September 22, 1989).

**2216 AMENDMENT OF INVITATION FOR BIDS**

- 2216.1** Amendments to an IFB shall be identified as such and shall require the bidder to acknowledge receipt of all amendments issued.
- 2216.2** If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, or other times, or to correct a defective or ambiguous IFB, the change shall be accomplished by amendment of the IFB.
- 2216.3** Each amendment shall reference the portion of the IFB it amends.
- 2216.4** The contracting officer shall send each amendment to all prospective bidders to which an IFB has been furnished.
- 2216.5** The contracting officer shall distribute each amendment within a reasonable time to allow all prospective bidders to consider the information in submitting or modifying their bids.

- 2216.6 If the time and date for receipt of bids does not permit preparation of the bid, the contracting officer shall increase the time for submission of the bids to the extent possible in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6722 (September 22, 1989).

**2217 CANCELLATION OF INVITATIONS FOR BIDS BEFORE OPENING**

- 2217.1 An IFB shall not be cancelled unless the Director determines in writing that cancellation is in the best interests of the Agency.
- 2217.2 If an IFB is cancelled, all bids that have been received shall be returned unopened to the bidders.
- 2217.3 The contracting officer shall send a notice of cancellation to all prospective bidders to which IFB's were issued.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6723 (September 22, 1989).

**2218-2219 [RESERVED]**

**2220 SUBMISSION OF BIDS: GENERAL PROVISIONS**

- 2220.1 To be considered for award, a bid shall be required to comply in all material respects with the IFB.
- 2220.2 Bids shall be filled out, executed, and submitted in accordance with the instructions in the IFB.
- 2220.3 Bids shall be submitted so that they will be received in the office designated in the IFB not later than the exact time set for opening of bids.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6723 (September 22, 1989).

**2221 MODIFICATION OR WITHDRAWAL OF BIDS**

- 2221.1 A bid may be modified or withdrawn by written or telegraphic notice received in the office designated in the IFB not later than the exact time set for opening of bids.
- 2221.2 If a bid is withdrawn in accordance with this section, any bid security shall be returned to the bidder.

- 2221.3** All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate contract file.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6723 (September 22, 1989).

**2222 LATE BIDS, LATE MODIFICATIONS, AND LATE WITHDRAWALS**

- 2222.1** Unless the solicitation states another time, the deadline for receipt of bids shall be 2:00 p.m., local time, at the designated Agency office on the date that bids are due.
- 2222.2** Any bid received at the place designated in the solicitation after the time and date set for receipt of bids shall be considered a "late" bid unless it was received prior to the contract award and either of the following applies:
- (a) It was sent by registered or certified mail not later than five (5) calendar days before the bid receipt date specified; or
  - (b) It was sent by mail (or telegram if authorized) and the contracting officer determines that the late receipt was due solely to mishandling by the Agency after receipt at the location specified in the IFB.
- 2222.3** Any request for withdrawal or request for modification received after the time and date set for opening of bids at the place designated for opening shall be considered late.
- 2222.4** The following information shall, if available, be included in the Agency files with respect to each late bid, late modification of a bid, or late withdrawal of bid:
- (a) A statement of the date and hour of mailing, filing, or delivery;
  - (b) A statement of the date and hour of receipt;
  - (c) A written determination, with supporting facts, why the late bid, late modification, or late withdrawal was or was not considered;
  - (d) A statement of the disposition of the late action; and
  - (e) The envelope, or other covering, if the late bid or modification was considered.
- 2222.5** The only acceptable evidence to establish the date of a late bid, late modification, or late withdrawal sent either by registered or certified mail shall be a U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be deemed to have been mailed late. When the postmark shows the date but not the hour, the time is presumed to be the last minute of the date shown. If no date is shown in the postmark, the bid shall be considered late unless the bidder can furnish evidence from the postal authorities of timely mailing.



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- 2222.6 A late bid, late request for modification, or late request for withdrawal shall not be considered, except as provided otherwise in this section.
- 2222.7 A late modification of a successful bid which makes its terms more favorable to the Agency shall be considered at any time it is received and may be accepted.
- 2222.8 A late bid, late modification of bid, or late withdrawal of bid that is not considered for award shall be held unopened, unless opened for identification, until after award and then retained with unsuccessful bids.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6723 (September 22, 1989).

**2223 NOTICE TO BIDDERS OF LATE ACTIONS**

- 2223.1 If a bid, modification of bid, or withdrawal of bid is received late, and it is clear from available information that it cannot be considered, the contracting officer shall promptly notify the bidder.
- 2223.2 If a late bid, late modification of bid, or late withdrawal of bid is transmitted by registered or certified mail and is received before award, but it is not clear from available information whether it can be considered, the bidder shall be promptly notified.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6725 (September 22, 1989).

**2224 [RESERVED]**

**2225 RECEIPT AND SAFEGUARDING OF BIDS**

- 2225.1 All bids and modifications received before the time set for the opening of bids shall be kept secure.
- 2225.2 Except as provided in §2225.8, all bids shall remain unopened in a locked box or safe.
- 2225.3 Necessary precautions shall be taken to ensure the security of the bid box or safe.
- 2225.4 If an IFB is cancelled, the bids shall be returned to the bidders.
- 2225.5 Before bid opening, information concerning the identity and number of bids received shall be made available only to Agency employees, and then only as required in the execution of their duties.

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- 2225.6 When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.
- 2225.7 Each bid shall be marked with the date and time of receipt.
- 2225.8 Envelopes marked as bids which do not identify the bidder or the solicitation may be opened solely for the purpose of identification or to determine whether a bidder is eligible to bid, and then only by an official designated for this purpose.
- 2225.9 A person who opens a sealed bid by mistake, or for the reasons set forth in §2225.8, shall sign the envelope opened, indicate the person's position, and deliver it to the contracting officer. The contracting officer shall immediately write the following on the envelope and then sign and reseal the envelope:
- (a) An explanation of the opening;
  - (b) The date and time opened; and
  - (c) The IFB number.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6725 (September 22, 1989).

**2226 OPENING OF BIDS**

- 2226.1 Bids and modifications shall be opened publicly, at the time, date, and place designated in the IFB. The bids shall be tabulated or a bid abstract made.
- 2226.2 The name of each bidder, the bid price, and other information that is deemed appropriate shall be read aloud or otherwise made available. This information shall be recorded at the time of bid opening.
- 2226.3 Examination of bids by interested persons may be permitted if it does not interfere unduly with the conduct of Agency business or violate the provisions of Chapter 42 of Title 27 DCMR.
- 2226.4 The original copy of the bid may be examined by the public only under the immediate supervision of an Agency official and under conditions that preclude the possibility of a substitution, addition, deletion, or alteration of the bid.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6726 (September 22, 1989).

**2227 POSTPONEMENT OF BID OPENING**

- 2227.1 The contracting officer may postpone a bid opening until after the time scheduled for bid opening under the following circumstances:
- (a) If the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mail for causes beyond the control of bidders without fault or negligence, such as flood, fire, accident, weather conditions, or strikes; or

- (b) If unanticipated events interrupt normal governmental processes so that the conduct of bid openings as scheduled is impractical.

- 2227.2 At the time of a decision to postpone a bid opening, an announcement decision shall be publicly posted. If practical, before the issuance of a formal amendment of the IFB, the decision shall be informally communicated to prospective bidders who are likely to attend the scheduled bid opening.
- 2227.3 When a bid opening is postponed, the time of actual bid opening shall be the time established in determining "late bids" or other late actions under §2222.
- 2227.4 The contracting officer shall prepare a written memorandum for the file explaining the circumstances of the postponement.
- 2227.5 The contracting officer may proceed with the bid opening as soon as practical after the original scheduled time without prior amendment to the IFB or notice to bidders, whenever any delay incident to the issuance of the amendment or notice would not be in the best interests of the Agency.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6726 (September 22, 1989).

## **2228 RECORDING OF BIDS**

- 2228.1 A "bid abstract" form shall be completed and certified as to its accuracy by the bid opening officer at a reasonable time after bid opening, but prior to contract award.
- 2228.2 The abstract information shall be made available for public inspection.
- 2228.3 If the IFB is cancelled before the time set for bid opening, this fact shall be recorded together with a statement of the number of bids invited and the number of bids received.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6727 (September 22, 1989).

## **2229 [RESERVED]**

## **2230 CANCELLATION OF AN INVITATION FOR BIDS AFTER OPENING**

- 2230.1 An IFB may be cancelled, or all bids rejected, only if the Director determines in writing that the action taken is in the best interests of the Agency. If all bids have been rejected, the contracting officer shall cancel the solicitation.



- 2230.2 Every effort shall be made to anticipate changes in a requirement before the date of bid opening and to notify all prospective bidders of any resulting modification or cancellation.
- 2230.3 After the opening of a bid, an IFB shall not be cancelled and resolicited due solely to increased requirements for the items being procured. Award shall be made on the initial IFB and the additional quantity shall be treated as a new procurement.
- 2230.4 An IFB may be cancelled and all bids rejected before award but after opening when the Director determines in writing that cancellation is in the best interests of the Agency for any reason, including the following:
- (a) Inadequate or ambiguous specifications were cited in the IFB;
  - (b) Specifications have been revised;
  - (c) The supplies or services being contracted for are no longer required;
  - (d) The IFB did not provide for consideration of all factors of cost to the Agency;
  - (e) Bids received indicate that the needs of the Agency can be satisfied by a less expensive article differing from that for which the bids were invited;
  - (f) All otherwise acceptable bids received are at unreasonable prices, or only one (1) bid is received and the contracting officer cannot determine the reasonableness of the bid price, or no responsive bid has been received from a responsible bidder; or
  - (g) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
- 2230.5 If administrative difficulties are encountered after bid opening which may delay award beyond the bidders' acceptance period, the several lowest bidders shall be requested before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6727 (September 22, 1989).

## **2231 REJECTION OF INDIVIDUAL BIDS**

- 2231.1 Any bid that fails to conform to the essential requirements of the IFB shall be rejected.
- 2231.2 Any bid that does not conform to the applicable specifications shall be rejected unless the IFB authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the IFB.
- 2231.3 Any bid that fails to conform to the delivery schedule or permissible alternates stated in the IFB shall be rejected.

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- 2231.4 A bid shall be rejected if the bidder imposes conditions that would modify requirements of the IFB or limit the bidder's liability to the Agency. A bid shall be rejected if the bidder does the following:
- (a) Protects against future changes in conditions, such as increased costs, if total possible increased costs to the Agency cannot be determined;
  - (b) Fails to state a price and indicates that price shall be "price in effect at time of delivery" or words of equivalent meaning;
  - (c) States a price but qualifies it as being subject to "price in effect at time of delivery" or words of equivalent meaning;
  - (d) When not authorized by an IFB, the bidder conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation; or
  - (e) Limits the rights of the Agency under any contract clause.
- 2231.5 A low bidder may be requested to delete objectionable conditions from a bid, so long as the conditions do not go to the substance, as distinguished from the form, of the bid or would give the bidder an unfair advantage over other bidders. A condition goes to the substance of a bid when it affects price, quantity, quality, or delivery of the items or services offered.
- 2231.6 Any bid may be rejected if the contracting officer determines in writing that the bid price is unreasonable.
- 2231.7 A bid received from any bidder that is suspended, debarred, or otherwise ineligible shall be rejected if the period of suspension, debarment, or ineligibility has not expired by the bid opening date.
- 2231.8 Low bids received from bidders determined to be not responsible shall be rejected.
- 2231.9 When a bid security is required and a bidder fails to furnish the security in accordance with the requirements of the IFB, the rules set forth in §2701 of Chapter 27 of Title 27 DCMR shall be applicable.
- 2231.10 The originals of all rejected bids, and any written findings with respect to the rejections, shall be maintained in the contract file.
- 2231.11 If the contracting officer determines that it is necessary to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected and shall state the reason for the action.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6728 (September 22, 1989).



**2232 ALL OR NONE QUALIFICATIONS**

- 2232.1 Unless the solicitation provides otherwise, a bid may be responsive even though the bidder specifies that award will be accepted only on all, or a specified group, of the items.
- 2232.2 Bidders shall not be permitted to withdraw or modify an "all or none" qualification after bid opening because "all or none" qualifications are substantive and affect the rights of other bidders.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6730 (September 22, 1989).

**2233 MINOR INFORMALITIES OR IRREGULARITIES IN BIDS**

- 2233.1 Minor informalities or irregularities in bids may be waived if the contracting officer determines that the waiver is in the best interests of the Agency.
- 2233.2 The contracting officer may determine that the following, among others, are minor informalities or irregularities:
- (a) When a bidder fails to return the number of copies of signed bids required by the IFB;
  - (b) When the bidder fails to furnish information concerning the number of its employees;
  - (c) When a bidder fails to sign its bid, but only if one (1) of the following applies:
    - (1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or
    - (2) The firm submitting the bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature; submits evidence of that authorization; and the bid carries the proper typed, printed, or stamped signature; and
  - (d) When the bidder fails to acknowledge receipt of an amendment to the IFB, but only if one (1) of the following applies:
    - (1) The bid received clearly indicates that the bidder received the amendment (such as where the amendment added another item to the IFB and the bidder submitted a bid on the item); or
    - (2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon.



2233.3 When the bidder fails to provide timely certifications or information with respect to Equal Opportunity and Affirmative Action Programs or other IFB requirements, the contracting officer may allow additional time for the submission to be made prior to the award.

2233.4 When it is in the best interests of the Agency, the contracting officer shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or the contracting officer may waive the deficiency.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6730 (September 22, 1989).

**2234 MISTAKES IN BIDS BEFORE AWARD**

2234.1 After the opening of bids, the contracting officer shall examine each bid for mistakes.

2234.2 In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid and call attention to the suspected mistake.

2234.3 If the bidder alleges a mistake, the matter shall be processed before award in accordance with this section.

2234.4 The contracting officer may correct an apparent clerical mistake before award. If correction is allowed, the bid shall be corrected to the intended correct bid and may not be withdrawn.

2234.5 The authority to permit corrections of bids is limited to bids that, as submitted, are responsive to the IFB and shall not be used to permit correction of bids to make them responsive.

2234.6 If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn.

2234.7 A bidder may be permitted to withdraw a low bid in either of the following circumstances:

- (a) If a mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- (b) If the bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

2234.8 When a bid is corrected or withdrawn, or correction or withdrawal is denied, the contracting officer shall prepare a determination showing that the relief was granted or denied in accordance with this section.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6731 (September 22, 1989).

**2235 MISTAKES IN BIDS AFTER AWARD**

- 2235.1** If a mistake in a bid is not discovered until after award, the mistake may be corrected by contract amendment if correcting the mistake would be favorable to the Agency without changing the essential requirements of the specifications.
- 2235.2** In addition to the cases contemplated in §2235.1, or as otherwise authorized by law, if a mistake in a bid is not discovered until after award, the Director shall make one (1) of the following determinations:
- (a) To rescind a contract;
  - (b) To reform a contract to delete the items involved in the mistake or to reform a contract to increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original IFB; or
  - (c) That no change shall be made in the contract as awarded.
- 2235.3** Determinations under §§2235.2(a) and 2235.2(b) shall be made only on the basis of clear and convincing evidence that a mistake was mutual or unilaterally made by the contractor, and was so apparent as to have given the contracting officer notice of the probability of the mistake.
- 2235.4** The contracting officer shall include in the contract file a record of each determination made in accordance with this section, the facts involved, and the action taken.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6732 (September 22, 1989).

**2236-2239 [RESERVED]****2240 BID EVALUATION**

- 2240.1** The contracting officer shall determine whether a prospective contractor is responsible and whether the prices offered are reasonable.
- 2240.2** Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered will form a part of the award and the discount will be taken by the Agency if payment is made within the discount period specified by the bidder.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6732 (September 22, 1989).



**2241 CONTRACT AWARDS**

- 2241.1 Each contract shall be awarded to the responsible and responsive bidder whose bid meets the requirements set forth in the IFB, and is the lowest bid price or lowest evaluated bid price, considering only price and price related factors included in the IFB.
- 2241.2 A bid shall not be evaluated for any criterion that is not disclosed in the IFB.
- 2241.3 Award shall not be made until all required approvals have been obtained.
- 2241.4 The contracting officer shall make a contract award by written notice within the time for acceptance specified in the bid or an extension.
- 2241.5 A contract shall be deemed to have been awarded on the date that the contracting officer signed the contract.
- 2241.6 Following an award, a record showing the basis for determining the successful bidder shall be made a part of the contract file.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6733 (September 22, 1989).

**2242 ECONOMIC PRICE ADJUSTMENT**

- 2242.1 If a solicitation does not contain an economic price adjustment clause, but a bidder proposes an adjustment clause with a ceiling that the price will not exceed, the bid shall be evaluated on the basis of the maximum possible economic price adjustment of the quoted base price.
- 2242.2 If a bid received with an unsolicited economic price adjustment clause is eligible for award, the contracting officer shall request the bidder to agree to the inclusion in the award of an economic price adjustment clause, approved by the Director, that is subject to the same ceiling. If the bidder will not agree to an approved clause, the award may be made on the basis of the bid as originally submitted.
- 2242.3 A bid that contains an economic price adjustment with no ceiling shall be rejected unless a clear basis for evaluation exists.
- 2242.4 If an IFB contains an economic price adjustment clause and no bidder takes exception to the provisions, bids shall be evaluated on the basis of the quoted prices without the addition of the allowable economic price adjustment.
- 2242.5 If a bidder increases the maximum percentage of economic price adjustment stipulated in the IFB or limits the downward economic price adjustment provisions of the IFB, the bid shall be rejected as nonresponsive.
- 2242.6 If a bid indicates deletion of the economic price adjustment clause, the bid shall be rejected as nonresponsive.
- 2242.7 If a bidder decreases the maximum percentage of economic price adjustment stipulated in the IFB, the bid shall be evaluated at the base price on an equal



basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6733 (September 22, 1989).

## **2243 RESOLVING TIE BIDS**

**2243.1** Contracts shall be awarded in the following order by priority when two (2) or more low bids are equal in all respects:

- (a) Minority business certified by the Minority Business Opportunity Commission;
- (b) District-based business;
- (c) Other businesses.

**2243.2** Notwithstanding the requirements of §2243.1, when the imposition of a penalty pursuant to D.C. Law 6-116 results in equal lowest price evaluation between bidders with business interests in the Republic of South Africa or Namibia and a bidder who does not have these business interests, the contract shall be awarded to the bidder with no business interests in the Republic of South Africa or Namibia.

**2243.3** If two (2) or more bidders remain equally eligible for award, award shall be made by a drawing by lot limited to those bidders.

**2243.4** The drawing shall be witnessed by at least three (3) persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

**2243.5** If an award is made by using the priorities in this section, the contracting officer shall include a written agreement in the contract that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6734 (September 22, 1989).

EDITOR'S NOTE: D.C. Law 10-134, 41 DCR 2597 (May 13, 1994) repealed sanctions imposed on the Republic of South Africa by the Prohibition of the Investment of Public Funds in Financial Institutions and Companies Making Loans to or Doing Business with the Republic of South Africa or Namibia Act of 1983 (D.C. Law 5-50); and the South Africa and Namibia Contracting Sanction Amendment Act of 1986 (D.C. Law 6-116).

## **2244 [RESERVED]**

**2245 INFORMATION TO BIDDERS**

- 2245.1 Written notice of award shall be send to the successful bidder.
- 2245.2 Notice of award shall be made available to the public.
- 2245.3 Notices of awards of all contracts of ten thousand dollars (\$10,000), and above shall be published in the "*District of Columbia Procurement Digest*."
- 2245.4 The contracting officer shall notify unsuccessful bidders promptly that their bids were not accepted, and shall return any bid security furnished with the unsuccessful bids to the unsuccessful bidders.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6735 (September 22, 1989).

**2246-2249 [RESERVED]****2250 TWO-STEP SEALED BIDDING**

- 2250.1 The two-step sealed bidding method may be used for procurements requiring technical proposals, particularly those for complex items.
- 2250.2 The two-step sealed bidding method shall be conducted as follows:
- (a) The first step consists of solicitation of technical proposals, evaluation of proposals, and (if necessary) discussion of the proposals; and
  - (b) The second step involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one.
- 2250.3 The contracting officer shall not request, and the bidder shall not submit, price or price information in step one.
- 2250.4 The contracting officer shall determine the acceptability of the supplies or services offered through clarification and discussion, if necessary, relating to technical proposals.
- 2250.5 Bids submitted shall be evaluated and awards made in accordance with the provisions of this chapter.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6735 (September 22, 1989).

**2251 CONDITIONS FOR USE OF TWO-STEP SEALED BIDDING**

**2251.1** Two-step sealed bidding may be used in preference to competitive sealed bids and proposals when all of the following conditions are present:

- (a) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Agency;
- (b) Definite criteria exist for evaluating technical proposals;
- (c) More than one (1) technically qualified source is expected to be available;
- (d) Sufficient time will be available for use of the two-step method; and
- (e) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

**2251.2** None of the following shall preclude the use of two-step bidding:

- (a) Multi-year contracting;
- (b) The fact that Agency-owned facilities may be made available to the successful bidder; or
- (c) A sheltered market procurement.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6736 (September 22, 1989).

**2252 TWO-STEP BIDDING SOLICITATION**

**2252.1** Each request for technical proposals shall be publicized and distributed in accordance with §2202 of this chapter and shall include, at least, the following:

- (a) A clear written statement that the Agency intends to use the two-step method and that the request for technical proposals is the first step in a two-part process;
- (b) A description of the supplies or services required;
- (c) The requirements of the technical proposal;
- (d) The evaluation criteria; and
- (e) The date and hour by which the proposal must be received.

**2252.2** Each request for technical proposals shall also contain the following statements:

- (a) A statement that the technical proposals shall not include prices or pricing information;



- (b) A statement that in the second step only bids based upon those technical proposals determined to be acceptable, either Initially or as a result of discussions, will be considered for awards and that each bid in the second step must be based on the prospective bidder's own technical proposals;
- (c) A statement that prospective bidders should submit proposals that are acceptable without additional explanation or information that the contracting officer may make a final determination regarding the acceptability of the proposal solely on the basis of the proposal as submitted, and that the Agency may proceed with the second step without requesting further information from any prospective bidder; Provided, that the contracting officer may request additional information from submitters of proposals that it considers reasonably susceptible of being made acceptable and may discuss proposals with these potential bidders;
- (d) A statement that a notice of unacceptability will be forwarded to the prospective bidder upon completion of the proposal evaluation and final determination of unacceptability; and
- (e) A statement either that only one (1) technical proposal may be submitted by each prospective bidder or that multiple technical proposals may be submitted.

2252.3 When specifications permit different technical approaches, multiple proposals may be authorized if it would be in the best interests of the Agency.

2252.4 The request shall indicate that information in the technical proposal on delivery or performance is not binding on the Agency, and that the actual delivery or performance requirements will be contained in the IFB issued under step two.

SOURCE: Final Rulemaking published at 36 DCR 6681, 6736 (September 22, 1989).

## **2253 RECEIPT AND EVALUATION OF STEP ONE PROPOSALS**

2253.1 Upon receipt, the contracting officer shall do the following:

- (a) Safeguard proposals against disclosure to unauthorized persons;
- (b) Accept and handle data with restrictive disclosure procedures in accordance with Chapter 31 of Title 27 DCMR; and
- (c) Remove any reference to price or cost.

2253.2 The contracting officer shall establish a time period for evaluating technical proposals. The period may vary with the complexity and the number of proposals received.

2253.3 Evaluations shall be based on the criteria in the request for technical proposals without consideration of responsibility.

2253.4 Proposals shall be categorized as one (1) of the following:

- (a) Acceptable;
  - (b) Reasonably susceptible of being made acceptable; or
  - (c) Unacceptable.
- 2253.5 Any proposal which modifies or fails to conform to the essential requirements or specifications of the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.
- 2253.6 The contracting officer may proceed directly with step two if there are a sufficient number of acceptable proposals to ensure adequate price competition under step two, and if further time, effort, and delay to make additional proposals acceptable and thereby increase competition would not be in the best interests of the Agency.
- 2253.7 If it is not in the best interests of the Agency to proceed directly with step two, the contracting officer shall request prospective bidders whose technical proposals may be made acceptable to submit additional clarifying or supplemental information.
- 2253.8 If discussions are held, the contracting officer shall identify the nature of the deficiencies in the technical proposal or the nature of the additional information required.
- 2253.9 No technical proposal shall be discussed with any prospective bidder other than the prospective bidder submitting the technical proposal.
- 2253.10 When requesting additional information, the contracting officer shall fix an appropriate time for prospective bidders to conclude, discussions, if any; to submit all additional information; and to incorporate that additional information as part of their proposals.
- 2253.11 The time for completing the actions under §2253.10 may be extended at the discretion of the contracting officer.
- 2253.12 If the additional information incorporated as part of a technical proposal within the final time fixed by the contracting officer establishes that the technical proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.
- 2253.13 If a technical proposal is found unacceptable, either initially or after clarification, the contracting officer shall promptly notify the prospective bidder of the basis of the determination and notify the prospective bidder that a revision of the proposal will not be considered.
- 2253.14 Upon written request, and as soon as possible after award, the contracting officer may debrief unsuccessful bidders.
- 2253.15 If it is necessary to discontinue two-step sealed bidding, the contracting officer shall include a statement of the facts and circumstances in the contract file.

- 2253.16 Each prospective bidder shall be notified in writing of the discontinuance of two-step sealed bidding.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 67357 (September 22, 1989).

**2254 STEP-TWO PROCEDURES**

- 2254.1 The competitive sealed bidding procedures set forth in this chapter shall be followed except as follows:

- (a) An IFB shall be issued only to those prospective bidders that submitted acceptable technical proposals in step one;
- (b) The IFB shall prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and
- (c) The IFB shall not be advertised in newspapers or publicly posted.

**SOURCE:** Final Rulemaking published at 36 DCR 6681, 6739 (September 22, 1989).

**2299 DEFINITIONS**

- 2299.1 The definitions of terms and phrases set forth in §2099 of Chapter 20 shall apply to this chapter.